

United States  
Circuit Court of Appeals  
For the Ninth Circuit

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TIMOTEO ANGCO and CIPRIANO ANGCO, Minors,  
by VICTOR FERIL ANGCO, their uncle and  
next friend,

Plaintiffs—Plaintiffs—in—Error,

vs.

THE STANDARD OIL COMPANY OF CALIFORNIA,  
a corporation,

Defendant—Defendant—in—Error.

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Transcript of Record

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UPON APPEAL FROM THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

FILED

JUN 23 1932

PAUL P. O'BRIEN,  
CLERK



No.

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United States  
Circuit Court of Appeals  
For the Ninth Circuit

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TIMOTEO ANGCO and CIPRIANO ANGCO, Minors,  
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a corporation,

Defendant—Defendant—in—Error.

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Transcript of Record

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UPON APPEAL FROM THE SUPREME COURT OF THE  
TERRITORY OF HAWAII



NO. 2031  
 IN THE SUPREME COURT OF THE  
 TERRITORY OF HAWAII

TIMOTEO ANGCO and CIPRIANO  
 ANGCO, Minors, by VICTOR FE-  
 RIL ANGCO, their uncle and  
 next friend,  
 Plaintiff-Plaintiffs-in-Error,  
 vs.  
 THE STANDARD OIL COMPANY  
 OF CALIFORNIA, a corporation,  
 Defendant-Defendant-in-error.

ERROR TO CIRCUIT  
 COURT FIRST  
 CIRCUIT.

HONORABLE  
 A. M. CRISTY,  
 PRESIDING.

LIST OF PAPERS, ENTRIES, DOCUMENTS,  
 PLEADINGS, OPINION, FINAL JUDGMENT,  
 TRANSMITTED TO THE CIRCUIT COURT  
 OF APPEALS FOR THE NINTH CIRCUIT  
 ON APPEAL.

1. Plaintiffs' complaint, dated November 18, 1930,  
 and attached thereto as part thereof are the  
 following, viz: Motion by the plaintiffs for  
 appointment of next friend and Order of  
 Motion; Term Summons, issued November  
 19, 1930, with return of service, dated and  
 filed November 19, 1930, .. . . . . . 1-8
2. Defendant's answer, dated and filed December 8,  
 1930, .... . . . . . 9-10
3. Demand for jury trial by plaintiff, dated and filed  
 December 12, 1930, .. . . . . . 11-12
4. Judgment entered in the Circuit Court of the  
 First Judicial Circuit of the Territory of Ha-  
 waii, filed March 3, 1931, .. . . . . . 13-14
5. Writ of Error, dated, dated and filed July 9, 1931 .. 15-17
6. Opinion of the Supreme Court of the Territory of

Items.	Pages.
Hawaii, filed December 8, 1931, .. . . .	18-34
7. Judgment on writ of error, dated and filed December 29, 1931, .. . . .	35-36
8. Petition on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and Affidavit of A. W. A. Cowan, dated March 21, 1932, filed March 22, 1932, .. . . .	37-42
9. Second Revised Statement of Evidence, filed April 16, 1932, .. . . .	67-83
10. Assignment of Errors, dated March 21, filed March 22, 1932, .. . . .	43-47
11. Order Allowing Appeal and Fixing Amount of Bond, dated March 21, 1932, filed March 22, 1932, .. . . .	48-50
12. Citation on Appeal, dated March 21, 1932, filed March 22, 1932, with admission of service by the attorneys of the defendant-defendant- in-error, .. . . .	51-53
13. Bond on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and approval thereof, filed March 22, 1932, for the sum of \$250.00; Timoteo Angco and Cipriano Angco, Minors, by Victor Feril Ang- co, their uncle and next friend, Principals; United States Fidelity & Guaranty Company, Surety; and The Standard Oil Company of California, Oblige, .. . . .	54-57
14. Order Extending time to April 21, 1932, filed March 22, 1932, .. . . .	58-60
15. Praecipe for transcript of record, dated March 21, 1932, filed March 22, 1932, .. . . .	61-64
16. Order Extending time to May 29, 1932, filed April 23, 1932, .. . . .	67-83
17. Clerk's Certificate .. . . .	84-85
18. Order Extending Time to June 29, 1932, Filed May 24, 1932 .. . . .	86-87
19. Clerk's Certificate .. . . .	88

IN THE CIRCUIT COURT OF THE FIRST  
JUDICIAL CIRCUIT

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TIMOTEO ANGCO and CIPRIANO ANGCO,  
Minors, by VICTOR FERIL ANGCO,  
their uncle and next friend,

Plaintiffs,

v.

THE STANDARD OIL COMPANY OF CALI-  
FORNIA, a corporation,

Defendant.

TORT

- 
1. COMPLAINT
  2. MOTION FOR APPOINTMENT OF NEXT FRIEND
  3. ORDER ON MOTION
  4. SUMMONS

FILED

At 11:05 o'clock A. M.

Nov. 19, 1930

D. K. SHERWOOD

Clerk

ULRICH & HITE,

430 Dillingham Building,

Honolulu, T. H.

[Attorneys for Plaintiff]

RETURNED

At 2:00 o'clock P. M.

Nov. 19, 1930

D. W. SHERWOOD,

[Clerk]

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL  
CIRCUIT, TERRITORY OF HAWAII

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FERIL ANGCO, their uncle and next friend, <span style="display: block; text-align: right;">Plaintiffs,</span></p> <p style="text-align: center;">v.</p> <p>THE STANDARD OIL COMPANY OF CALI- FORNIA, a corporation, <span style="display: block; text-align: right;">Defendant.</span></p>	}	TORT
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C O M P L A I N T

Come now TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by their next friend, VICTOR FERIL ANGCO, plaintiffs herein, and, complaining of THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, defendant herein, for cause of action allege as follows:

I.

That plaintiffs are now and at all times hereinafter mentioned have been minors, and are residents of the Philippine Islands; that VICTOR FERIL ANGCO, their uncle and next friend, is a resident of Honolulu, City and County of Honolulu, Territory of Hawaii; that THE STANDARD OIL COMPANY OF CALIFORNIA is a foreign corporation, duly licensed and doing business within the Territory of Hawaii, and having its principal place of business in said Honolulu.



II.

That plaintiffs are the minor children of Felix Angco, now deceased.

III.

That said Felix Angco during his lifetime was the sole support of plaintiffs herein.

IV.

That on, to-wit, June 16, 1930, one REGINALD C. WARNER was an employee or agent of said defendant.

V.

That on said date said Warner, while driving a certain automobile on business for defendant, and while acting within the scope of his employment, did on the public highway of the County of Maui, Territory of Hawaii, so recklessly, negligently and in such utter and gross disregard of the rights of others drive said automobile as to collide with and strike said Felix Angco, as a result whereof said Felix Angco did on, to-wit, June 19, 1930, die.

VI.

That in any by the death of said Felix Angco plaintiffs were deprived of the support to which they might legally look from said Felix Angco, and were damaged in the sum of \$35,000.00.

That at the time and place aforesaid when said Felix Angco was so struck by said Warner, said Felix Angco was in no wise guilty of contributory negligence, but was at said time and place acting within the lawful exercise of his legal rights.

WHEREFORE IT IS PRAYED that process of this Court do issue, citing and summoning defendant to appear and answer this complaint as is by law provided; that upon

hearing hereof plaintiffs may have judgment of and against defendant in the sum of \$35,000.00, together with their costs herein.

Dated: Honolulu, T. H., November 18, 1930

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TIMOTEO ANGCO and CIPRIANO ANGCO,  
Plaintiffs,

By VICTOR FERIL ANGCO  
Their Next Friend.

TERRITORY OF HAWAII, ) SS  
City and County of Honolulu, )

VICTOR FERIL ANGCO, being first duly sworn, on oath deposes and says; That he is the uncle and next friend of TIMOTEO ANGCO and CIPRIANO ANGCO, Minors; that he has read the foregoing complaint by him subscribed, knows the contents thereof, and that the same are true.

(S) VICTOR FERIL ANGCO

Subscribed and sworn to before me this 18 day of November, A. D. 1930.

(S) KATHRYN R. CONNOR  
Notary Public, First Judicial Circuit,  
Territory of Hawaii.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL  
CIRCUIT TERRITORY OF HAWAII

---

TIMOTEO ANGCO and CIPRIANO ANGCO,  
Minors, by VICTOR FERIL ANGCO,  
their uncle and next friend,

Plaintiffs,

v.

THE STANDARD OIL COMPANY OF CALI-  
FORNIA, a corporation,

Defendant.

---

TORT

MOTION FOR APPOINTMENT OF NEXT FRIEND

Come now TIMOTEO ANGCO and CIPRIANO ANGCO,  
Minors, by their attorneys, Ulrich & Hite, and move for the  
appointment of VICTOR FERIL ANGCO as their next friend  
to prosecute the above entitled action.

This motion is based upon the records herein.

Dated: Honolulu, T. H., November 19, 1930.

TIMOTEO ANGCO and CIPRIANO ANGCO,  
Minors,

By ULRICH & HITE.

By (S) Chas. M. Hite  
Their Attorneys

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL  
CIRCUIT TERRITORY OF HAWAII

---

TIMOTEO ANGCO and CIPRIANO ANGCO,  
Minors, by VICTOR FERIL ANGCO,  
their uncle and next friend,  
Plaintiffs,

v.

THE STANDARD OIL COMPANY OF CALI-  
FORNIA, a corporation,  
Defendant.

---

**TORT**

ORDER ON MOTION

Good cause appearing therefor, VICTOR FERIL ANGCO is hereby appointed next friend of TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, to prosecute on their behalf the above entitled cause.

Dated: Honolulu, T. H., November 19, 1930.

(S) WILLIAM C. ACHI  
Judge, Circuit Court,  
First Judicial Circuit,  
Territory of Hawaii.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL  
CIRCUIT TERRITORY OF HAWAII

A. D. 19 . . . . Term

TIMOTEO ANGCO and CIPRIANO ANGCO,  
 Minors, by VICTOR FERIL ANGCO,  
 their uncle and next friend,  
 Plaintiffs,

v.

THE STANDARD OIL COMPANY OF CALI-  
 FORNIA, a corporation,  
 Defendant.

TERM SUMMONS

THE TERRITORY OF HAWAII:

TO THE HIGH SHERIFF OF THE TERRITORY OF HAWAII, OR HIS DEPUTY; THE SHERIFF OF THE CITY AND COUNTY OF HONOLULU, OR HIS DEPUTY, OR ANY POLICE OFFICER IN THE TERRITORY OF HAWAII MAKING SERVICE HEREOF:

YOU ARE COMMANDED to summon the above named Defendant . . . ., in case it shall file written answer WITHIN TWENTY DAYS AFTER SERVICE HEREOF, to be and appear before the First Circuit Court at the Judiciary Building in Honolulu, at the term thereof pending immediately after the expiration of twenty days after service hereof; TO SHOW CAUSE why the claim of the above named Plaintiff . . . . should not be awarded pursuant to the tenor of the annexed Complaint.

AND have you then there this Writ with full return of your proceedings thereon.

WITNESS the Honorable Presiding Judge of the Circuit

Court of the First Judicial Circuit at Honolulu aforesaid, this 19 day of November, 1930.

(S) D. K. SHERWOOD  
Clerk.

**SHERIFF'S RETURN**

SERVED the within summons on STANDARD OIL COMPANY OF CALIFORNIA, through E. J. McClanahan, Manager

at ..... Honolulu, T. H., ..... this 19th day of November, 1930, by delivering to him a certified copy hereof and of the complaint hereto annexed and at the same time showing him the original.

Dated Nov. 19, 1930.

(S) MOSES W. KAULULAAU  
Police Officer

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL  
CIRCUIT TERRITORY OF HAWAII

TIMOTEO ANGCO and CIPRIANO ANGCO,  
Minors, by VICTOR FERIL ANGCO,  
their uncle and next friend,

Plaintiffs,

-vs-

THE STANDARD OIL COMPANY OF CALI-  
FORNIA, a corporation,

Defendant

TORT

DEFENDANT'S ANSWER

FILED

AT 3:50 o'clock P. M.

Dec. 8, 1930

D. K. SHERWOOD

Clerk

SMITH & WILD

McCandless Bldg.,

Honolulu, T. H.

Attorneys for Defendant.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL  
CIRCUIT TERRITORY OF HAWAII

TIMOTEO ANGCO and CIPRIANO ANGCO,  
Minors, by VICTOR FERIL ANGCO,  
their uncle and next friend.

Plaintiffs,

-vs-

THE STANDARD OIL COMPANY OF CALI-  
FORNIA, a corporation,

Defendant.

TORT

DEFENDANT'S ANSWER,  
TO THE HONORABLE, THE PRESIDING JUDGE OF THE  
ABOVE-ENTITLED COURT:

Comes now THE STANDARD OIL COMPANY OF CALI-  
FORNIA, a corporation, the above-named Defendant, by its  
attorneys SMITH & WILD, and by way of answer to Plain-  
tiffs' Complaint heretofore filed herein denies each and  
every, all and singular, the allegations therein contained.

WHEREFORE, Defendant prays that it be hence dis-  
missed with its costs herein incurred.

DATED: Honolulu, T. H., this 8th day of December, 1930.

THE STANDARD OIL COMPANY  
OF CALIFORNIA,

By SMITH & WILL

Its Attorneys,

By (S) C. A. Gregory



IN THE CIRCUIT COURT OF THE FIRST JUDICIAL  
CIRCUIT TERRITORY OF HAWAII

---

TIMOTEO ANGCO and CIPRIANO ANGCO,  
Minors, by VICTOR FERIL ANGCO,  
their uncle and next friend,  
Plaintiffs,

vs.

THE STANDARD OIL COMPANY OF CALI-  
FORNIA, a corporation,  
Defendant.

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TORT

DEMAND FOR JURY TRIAL

F I L E D  
AT 1:50 o'clock P. M.  
DEC. 12, 1930  
D. K. Sherwood  
Clerk

ULRICH & HITE  
430 Dillingham Building  
Honolulu, T. H.  
Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL  
CIRCUIT TERRITORY OF HAWAII

---

TIMOTEO ANGCO and CIPRIANO ANGCO  
Minors, by VICTOR FERIL ANGCO,  
their uncle and next friend,

Plaintiffs,

vs.

THE STANDARD OIL COMPANY OF CALI-  
FORNIA, a corporation,

Defendant.

TORT

DEMAND FOR JURY TRIAL

Come now TIMOTEO ANGCO and CIPRIANO ANGCO, minors, by VICTOR FERIL ANGCO, their uncle and next friend, plaintiffs, by ULRICH & HITE, their attorneys, and demand a jury for the trial of the above entitled cause.

Dated: Honolulu, T. H., December 11 A. D. 1930.

Certify served on  
Defendant Dec. 11, 1930  
by mailing true copy to  
its attorneys.

SMITH & WILD.

Chas. M. Hite

TIMOTEO ANGCO and CI-  
PRIANO ANGCO, minors, by  
VICTOR FERIL ANGCO, their  
uncle and next friend,  
Plaintiffs

By ULRICH & HITE

By (S) Chas. M. Hite

Their attorneys

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL  
CIRCUIT, TERRITORY OF HAWAII.



TIMOTEO ANGCO and CIPRIANO ANGCO,  
 Minors, by VICTOR FERIL ANGCO,  
 their uncle and next friend,  
 Plaintiffs,  
 vs.  
 THE STANDARD OIL COMPANY OF CALI-  
 FORNIA, a corporation,  
 Defendant.

TORT

J U D G M E N T  
 46/58            \$20.50

F I L E D  
 AT 2:56 o'clock P. M.  
 MAR. 3, 1931  
 JOHN LEE KWAI  
 Clerk.

SMITH & WILD  
 207-214 McCandless Bldg.,  
 Honolulu, T. H.  
 Attorneys for Defendant.

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL  
CIRCUIT, TERRITORY OF HAWAII.**

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<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FERIL ANGCO, their uncle and next friend, <span style="float: right;">Plaintiffs,</span></p> <p style="text-align: center;"><b>vs.</b></p> <p>THE STANDARD OIL COMPANY OF CALI- FORNIA, a corporation, <span style="float: right;">Defendants.</span></p> <hr style="width: 80%; margin-left: 0;"/>	}	TORT
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**J U D G M E N T**

This action by petition to recover damages in the sum of \$35,000 came to the present term when the parties appeared and were at issue to the jury on the 18th day of February 1931.

Said cause having been heard and committed to the jury on February 25, 1931, and the jury returning a verdict for the defendant pursuant to the direction of the court.

IT IS THEREFORE ADJUDGED that the Plaintiffs, recover nothing of the Defendant and IT IS FURTHER ADJUDGED that judgment be for the Defendant, and that the Defendant recover from the Plaintiffs herein its costs taxed in the sum of \$45.50.

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BY THE COURT:

John Lee Kwai

Clerk

O. K. as to form

ULRICH & HITE

ENTERED THIS ..... day  
of ....., 1931.

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NO. 2031

IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FE- RIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error, vs. THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error.</p>	}	<p>WRIT OF ERROR TO DECREE OF THE CIRCUIT COURT FIRST JUDICIAL CIRCUIT AT LAW HON. A. M. CRISTY SECOND JUDGE PRESIDING</p>
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WRIT OF ERROR

Received and filed  
in the Supreme Court and issued  
July, 9, 1931

AT 3:15 o'clock P. M.

(S) ROBERT PARKER JR.  
Assistant Clerk

F I L E D

AT 3:50 o'clock P. M.

JULY 9, 1931

D. K. SHERWOOD  
Clerk.

NO. 2031

IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FERIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error, vs. THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error</p>	}	<p>WRIT OF ERROR TO DECREE OF THE CIRCUIT COURT FIRST JUDICIAL CIRCUIT AT LAW HON. A. M. CRISTY, SECOND JUDGE PRESIDING</p>
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## WRIT OF ERROR

THE TERRITORY OF HAWAII:

To the Clerk of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, at Law:

Application having been made on behalf of said TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FERIL ANGCO, their uncle and next friend, for a writ of error in the above-entitled case, you are commanded forthwith to send to the Supreme Court the record in said case.

WITNESS the Honorable Antonio Perry, Chief Justice of the Supreme Court, this 9th day of July, A. D. 1931.

(S) ROBERT PARKER, JR.

Assistant Clerk of the Supreme Court

RETURN OF WRIT OF ERROR

To the Clerk of the Supreme Court:

The execution of the within writ of error appears by the record hereto annexed.

Dated at Honolulu, T. H., this 28th day of July A. D. 1931.

[SEAL]

(S) D. K. SHERWOOD

Clerk of the Circuit Court of the First  
Judicial Circuit, Territory of Hawaii.

Receipt of a copy of the foregoing writ of  
error is hereby acknowledged this 8  
day of July A. D. 1931.

SMITH & WILD,

By (S) C. A. GREGORY

Attorneys for Defendant-Defendant-in-Error

NO. 2031

IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

OCTOBER TERM, 1931.

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FE- RIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs in error, vs. THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant in error.</p>	}	<p>ERROR TO CIRCUIT  COURT FIRST  CIRCUIT.  HON. A. M. CRISTY PRESIDING</p>
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OPINION OF THE SUPREME COURT.

Filed December 8, 1931,  
At 2:44 P. M.

(S) J. A. THOMPSON,  
Clerk.



IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

OCTOBER TERM, 1931.

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TIMOTEO ANGCO AND CIPRIANO ANGCO, MINORS, BY  
VICTOR FERIL ANGCO, THEIR UNCLE AND NEXT  
FRIEND, v. THE STANDARD OIL COMPANY OF  
CALIFORNIA.

NO. 2031.

ERROR TO CIRCUIT COURT FIRST CIRCUIT  
HON. A. M. CRISTY, JUDGE.

Argued November 27, 1931. Decided December 8, 1931.

PERRY, C. J., BANKS AND PARSONS, JJ.

Master and Servant—negligence—automobiles—liability of  
master.

The negligence of an employee of a corporation in operating  
an automobile, the property of the corporation, which  
was furnished him by the general agent of the corpo-  
ration for the sole purpose of returning from a per-  
sonal enterprise, in which he had been engaged, to  
the place of his employment where there is no emer-  
gent need of his services, is not imputable to the cor-  
poration.

## OPINION OF THE COURT BY BANKS J.

This is an action brought by Timoteo Angco and Cipriano Angco, minors, who sue by Victor Feril Angco, their uncle and next friend, against the Standard Oil Company of California, a corporation. The action is for damages arising out of the death of the father of the plaintiffs, upon whom they claim they were dependent for support. It is disclosed by the evidence that Felix Angco, the father, died on June 19, 1930, as the result of having been struck while standing on a public highway on the Island of Maui, by an automobile, the property of the defendant, and which at the time of the collision was being operated by one Reginald Warner, who was in the employment of the defendant as chief engineer on the steamship Lubrico, also owned by the defendant. The action is based on the alleged negligence of Warner in operating the automobile.

At the conclusion of the plaintiffs' case and after they had rested and after the defendant, without introducing any evidence, had also rested, a motion was made by the defendant for a directed verdict. This motion was granted and a verdict was accordingly returned in favor of the defendant and against the plaintiffs. The case is here on a writ of error.

One of the errors assigned is: "The court below erred in that he ruled as a matter of law that the defendant's employee Warner was not acting within the scope of his employment as an agent of the defendant corporation, the Standard Oil Company of California, so as to make said company liable for his negligent acts when he, Warner, committed the negligent acts complained of."

Reginald Warner, who was called as a witness by the plaintiffs, testified that on June 16, 1930 (the date of the accident), he was employed by the defendant as chief engineer on the steamship Lubrico, which was at that time anchored at Kahului on the Island of Maui; that he re-

membered the accident in question and that he was at the time driving the automobile and was going towards the ship. When he was asked the question, "And you were going, were you not, to the steamship 'Lubrico,'" he answered, "We were going towards the steamship. I think we were going to stop and eat in Kahului first." He was then asked if he had not already testified that he was going to the steamship. He answered, "Yes," and then he was asked, "And you were, were you not?" to which he answered, "Not direct. I asked the captain if he wanted to eat, and he said, 'When we get down we will see.' " He was then asked, "And before going to sea you expected to eat in Kahului?" and answered, "Yes," and that aside from this he was on his way to the boat. He was then asked whether his duties on the boat would have to do with whatever the usual duties of the chief engineer are on a steamship, to which he answered, "Yes." He was then asked the following questions, to which he gave the following answers: "Q The boat was going to sea that night? A Yes. Q Captain Daniels was with you at the time? A Yes. Q He is the captain of the boat? A Yes. Q And the boat would go to sea under his command? A From the outside of Kahului harbor." On cross-examination the witness testified that as chief engineer of the steamship Lubrico he had no duties on shore at Kahului on the night or afternoon of June 16, 1930; that at the time he was driving the automobile he had not come from performing any duties for the Standard Oil Company and at the time he was driving the car he was not performing any duties for said company; that he was driving down to have a sandwich before going on the boat; that he had been chief engineer for several years and during that time had been in the employment of the defendant. At this juncture the following occurred: "The Court: The court would like to ask a question in view of the line of examination taken, in anticipation of being called upon to make rulings in the matter. When you went ashore did you go ashore in connection with being under or-

ders from anybody having a right to give you orders, or were you on shore that night? A Whenever I go on shore I can go as I please. The Court: Did any one order you to go ashore in connection with the boat? A No. The Court: In connection with driving the automobile that night did anyone give you any orders in connection with driving the car? A No. The Court: Did anyone give you any orders as to where you should go? A. No. The Court: At the time of the accident were you under orders of any superior, orders of anyone on the boat? A No, I just asked him if he wanted to eat. The Court: At the time you got in the car to go back to the boat the captain was with you? A Yes. The Court: Did the captain give you any orders as to returning to the boat and resuming your duties at that particular time? A No, sir. The Court: Were you performing any task or errand on behalf of the captain? A No, sir. The Court: When did you leave the 'Lubrico' to come ashore? A Between 2:30 and 3 o'clock. Q The Court: At that time were you on any errand connected with the boat? A No, sir. The Court: Were you in company with the captain under his orders to accompany him? A No, sir, I went there mostly with Mr. Burns to play golf. The Court: A pleasure trip? A Yes. The Court: When were you due back on the boat? A I asked the chief officer when he would be ready to go and he said between 9 and 11, so I thought to get back about 7:30. Mr. Pittman" (for defendant) "Q When you are on shore has anybody got any power over you at all or can they give you any authority at all? A No, I might respect his position and do a thing or two, but he has no authority. Mr. Pittman: Q Has anybody on the ship any authority over you when you are on land off the ship? A No, sir. \* \* \* Direct examination (continued) By Barry S. Ulrich, Esq." (For plaintiff): "Q It was your duty, was it not, to be back on the boat in time to sail? A Yes. Q And of course you say you are on your own more or less while you are ashore but the agents of the company have the

right, have they not, to indicate to you when the boat would sail; that is, if they decided to sail earlier you would have to appear on the boat. I mean the persons in authority were so in authority of that vessel? Mr. Wild: I object as purely speculative. There is no showing that boat changed its schedule that night. They were to sail at 9 and they proceeded back at 7:30. It is purely speculative. (Argument) The Court: The court will assume that a man on the boat if and when notified to return at an earlier time, if he wants to keep his job, would have to come back, but there is no showing there was any call to return earlier. Objection sustained. Q In other words, it was your duty to be on the boat in time to sail? A Yes. (Cross-examination waived.)"

The plaintiffs then offered, and the court received, in evidence an ordinance of the County of Maui relating to speed limits in residence districts. This concluded the testimony. Thereupon the defendant made a motion for a directed verdict, one of the grounds being that the plaintiffs' evidence showed affirmatively that Warner was not acting in the course or scope of his employment or upon the business of the defendant at the time of the accident. Before the motion was acted upon the plaintiffs (through counsel) moved that the court reopen their case and permit them to put further evidence. At this point, upon the request of the court that he be more specific as to what proof he offered to make, Mr. Ulrich continued: "We offer to prove by Mr. Burns that he did authorize Mr. Warner to take the car for the purpose of driving himself and the captain down to resume their duties on the boat. We offer to show that at first he said he would take them down himself, but later said he had a social engagement and they should take the car and leave it at the wharf and he would pick it up there later. We offer to prove Mr. Burns was the agent and representative of the Standard Oil Company on the Island of Maui, with general authority to attend to all necessary de-



tails of the business of that company on the Island of Maui having to do with the conduct of the business with reference to the disposition of merchandise on Maui and with reference to the necessary details concerning the despatch of the company's business."

The defendant objected to the granting of the motion on the ground that Burns, the proposed witness, had been in attendance, at the request of plaintiffs' counsel, during the trial, but, at the conclusion of the evidence, had returned to Maui. During the argument of the motion the court asked Mr. Ulrich the following question: "Do I understand that your offer means to prove that Mr. Burns in his office as an official of the company was requested to use the company's automobile for any other purpose than the conveyance of the captain and the engineer in returning from their holiday to their duties on the boat?" In answer to this question Mr. Ulrich replied: "In this particular instance he authorized the use of the automobile for the company's purposes in getting the men back to the boat." The court then asked the following question: "Was there any other company's business of any kind connected with your offer of proof that Mr. Burns was requested or concerned with furthering than the matter, whatever inference may be drawn from it, of assisting these two men in returning to the boat?" to which Mr. Ulrich replied: "That's all." The following colloquy then occurred: "Mr. Wild: From the offer of proof, as it now appears, it would not change the court's ruling, and counsel has in everything he contends to be a fact. Mr. Ulrich: If it will be admitted, as a matter of record, that Mr. Burns authorized the use of this car for the purpose of getting the men back to the boat, and further admitted that Mr. Burns is a representative of the Standard Oil Company on Maui. The Court: I understand the extent of opposing counsel's admission is that Mr. Burns is distributing and sales manager of Standard Oil Company pro-

ducts on the Island of Maui, having no supervision or control over the movement of the boats. Mr. Wild: That is an accurate statement. The Court: And automobile in question, Mr. Burns was under no orders or requests on company business other than could be inferred by your argument that the return of the men from their holiday in some way benefited and expedited the company's affairs as to the boat. Mr. Wild: We will admit that. The Court: Well, then it is not necessary to make the offer, and I deny the motion."

Since the trial court did not base its refusal to allow the plaintiffs to reopen the case and to make the proof which they offered to make on the ground that the offer was not sufficient or that under the circumstances it came too late, but solely on the ground that the proof, if made, would not alter the legal status of the parties, we will pass the question of whether it was an abuse of discretion to deny the motion without comment and treat the case as though the proof had been made.

The first contention of the plaintiffs regarding the action of the trial court in directing a verdict for the defendant is that under the evidence it was a question for the jury to decide whether Warner at the time of the accident was returning to the "Lubrico" for the purpose of meeting an emergency in the defendant's business, and if he was returning for such purpose, he was, as a matter of law, engaged in the defendant's business and the defendant would be liable for his negligence. The trouble with this contention is that it is entirely unsupported by the evidence. The testimony of Warner, which is uncontradicted and which was vouched for by the plaintiffs, he having been called as a witness by them, shows that when he left the "Lubrico" between 2:30 and three o'clock on the afternoon of June 16 to play golf he was informed by the chief officer that the boat would sail between nine and eleven o'clock that

night and that he (Warner) "thought to get back about 7:30." This is the evidence and th only evidence upon which the plaintiffs rely to establish an emergency. It falls far short of the mark. It has no tendency whatever to show that the necessities of the defendant's business, in any of its aspects, required Warner to return by 7:30 o'clock or at any definite hour before the boat sailed. It only shows that he knew the hours within which the boat would sail and that he intended to return to it by a certain time. Whether he intended to do this because of some duty which he as chief engineer was required to perform in connection with the departure of the boat or whether he merely preferred, for his own pleasure or convenience, to spend the time intervening between 7:30 and the hour of sailing on the boat or in its vicinity does not appear. The jury was very properly not permitted to speculate about this.

In order to hold the defendant liable on the theory of an emergency it was necessary for the plaintiffs to introduce substantial evidence, amounting to more than a scintilla, that such a condition existed. Not having done this the contention now under consideration cannot be sustained.

The plaintiffs also contend that irrespective of whether there was evidence of an emergency defendant is nevertheless liable because Burns, the defendant's agent on Maui, authorized Warner to use defendant's automobile as a means of returning to the boat. This contention cannot be sustained unless it can be said that in returning to the boat from his game of golf Warner was engaged in the defendant's business. The court below took the view that under the evidence he was, as a matter of law, not so engaged and directed a verdict accordingly.

It is argued on behalf of the plaintiffs that under the evidence this was a question of fact for the jury to decide and therefore the action of the court in withdrawing it from the jury was erroneous. In support of this argument



the familiar rule, that if the automobile causing the accident belongs to the defendant and is being operated at the time of the accident by one of the regular employees of the defendant there is a reasonable inference that at such time he was acting within the scope of his employment and in the furtherance of the master's business, is invoked. This rule, however, is subjecte to an exception which is as firmly established as the rule itself, this exception being that when the evidence, which is uncontradicted and unimpeachable, shows that the employee was engaged in the pursuit of his own business or pleasure, the inference recognized by the rule disappears and the employer, as a matter of law, is not responsible for the results of his employee's negligence. The books are full of cases in which courts have applied either the rule or the exception, according to the facts presented.

The plaintiffs have directed our attention to several cases in which the rule was adopted and the exception rejected. One of these is Casteel v. Yantis-Harper Tire Co., 36 S. W. (2nd) 406, 408. In this case the plaintiff, while standing in the safety zone at Eleventh street and Garrison avenue in the city of Fort Smith, was struck by an automobile the property of the defendant, which was being driven by an employee of the defendant who had been such for several years. It appears from the opinion of the court that the testimony on the part of the defendants was "to the effect that, although Tolliver had been employed by Yantis-Harper for several years, he was paid by the day, and was only paid when he worked, and that he was not employed or paid on the day of the injury. Tolliver testified that he was not employed on this day, and the cashier and time keeper of Yantis-Harper gave testimony to the same effect, as did other employees. Their testimony was to the effect that shortly before the collision Tolliver was loaned the use of one of Yantis-Harper's cars for the sole purpose of permitting Tolliver to go to his own home to get a raincoat which

he wanted for his own use because it was raining, and that the use of the car had no relation whatever to any service performed for Yantis-Harper or in connection with their business by Tolliver, and had no relation to any duty on Tolliver's part as an employee, and that, indeed, he was not an employee at all on that day." The court, in commenting on this testimony, said: "There are contradictions in the testimony of these witnesses, which prevent us from so holding, as a matter of law, and we are unable also to say, as a matter of law, that no bias on their part was shown. In the case of Skillern v. Baker, 82, Ark. 86, 100 S. W. 764, 765, 118 Am. St. Rep. 52, 12 Ann. Cas. 243, Mr. Justice Riddick said: 'It may be said to be the general rule that where an unimpeached witness testified distinctly and positively to a fact, and is not contradicted, and there is no circumstance shown from which an inference against the fact testified to by the witness can be drawn, the fact may be taken as established and a verdict directed based as on such evidence. But this rule is subject to many exceptions, and, where the witness is interested in the result of the suit or facts are shown that might bias his testimony, or, from which an inference may be drawn unfavorable to his testimony, or against the fact testified to by him, then the case should go to the jury.' "

In the case at bar there is no contradiction of Warner's testimony, nor is it susceptible of any other inference, that his sole object in using the defendant's car was to return from the place where he had been playing golf to the boat on which he was the chief engineer. The Casteel case is essentially different in its facts from the instant case and therefore is not a precedent which supports the plaintiffs' argument.

In Ackerson v. Jennings Co., 107 Conn. 393, also cited by the plaintiffs, the defendant was in the business of selling, repairing and rendering service for automobiles, having its main establishment in Bridgeport and branches in several

Connecticut cities, including one in Stamford. One Wilcox was general manager of the Stamford branch and as such had direct supervision of the conduct of the business of that branch, including the sale and service of cars and general control of defendant's employees connected therewith. One Root was service manager at the Stamford branch, having charge of all repair work, of the stock room and of the servicing of cars, and had direct supervision of the men employed in that department. Root's immediate superior, from whom he took orders, was Wilcox. On December 24, 1926, each of the employees of the Stamford branch received an invitation, written on the stationery of the defendant company and signed by Wilcox, reading as follows: "You are cordially invited to be my guest at a dinner to be held on the evening of January 8th, 1927, as a token of my appreciation of your services rendered for the company and myself." At an appointed hour most of the employees met at the office and were transported in two cars belonging to the defendant, and driven by Wilcox and Root to an inn, some distance away, where dinner was served. Root testified that Wilcox asked him to take a car and transport two of the men in his department and said that he (Wilcox) would transport the others. At the conclusion of the dinner Root took the same two men into the same car in which he had taken them to the dinner and while on the return journey the car, through the negligence of Root, left the road and collided with two poles, as a result of which Ackerson, one of the men riding with him, was killed and the other, Hunt, seriously injured. At the dinner Wilcox made a speech regarding the desirability of closer relations and consultation between the employees and himself, urging them that if any had grievances they should talk them over with him instead of keeping them to themselves. Wilcox testified that he gave the dinner on his own initiative and at his own expense to show his appreciation of

a Christmas gift that had been given to him by the employees. Speaking of the effect of this testimony the court said (pp. 397,398): "We think, however, in view of the statement of the purpose contained in the invitation and the above mentioned discussion at the dinner, that the jury might reasonably have found that the occasion was intended principally if not solely to promote legitimate and important interests of the defendant's business, viz., harmony, cooperation, and good will among the employees of the Stamford branch and between them and Wilcox as defendant's representative, and within the scope and implied authority of Wilcox, as its manager, acting in behalf of the defendant. Any secret intention of Wilcox which none of the employees knew or inferred could not be held to characterize the purposes of this occasion \* \* \* If Wilcox had, at the time and place, instructed Root to take one of defendant's cars and go to the relief of a disabled automobile out upon the road, no question could be made as to defendant's liability for consequences of Root's negligence while so engaged. If, as we think, the jury might have found, not unreasonably, if they believed all the testimony adduced by the plaintiffs, and adopted the inferences properly to be drawn therefrom, the trip upon which Root was engaged was, perhaps not so obviously but none the less truly, in the same category, a like result would follow. If, on the other hand, the jury concluded that the expedition was a personal entertainment by Wilcox, of the the employees of the company as his guests in return for the present which had been made to him and that such references as were made to the conduct of the business of the company were merely incidental and such as would naturally be discussed in a meeting of its employees, the occasion would not be within the apparent scope of Wilcox's authority as representing the defendant, and it would not be liable."

It is apparent that there is a material, factual difference

between this case and the case at bar. If Burns had directed Warner to use the defendant's car as a means of transporting him to some place on the Island of Maui, where he was to participate in an enterprise instigated by Burns for the defendant's benefit, and, after the completion of the enterprise, Warner had used the car to return to the boat and in doing so had negligently killed plaintiff's father, the cited case might be applicable. There is not a scintilla of evidence, however, to establish any such situation. Warner, according to the undisputed testimony introduced by the plaintiffs themselves, had, by some means not disclosed by the evidence, gone from the boat to a place on Maui to play golf, an enterprise wholly unconnected with the defendant's business. When he was ready to return to the boat Burns authorized him to use the defendant's car for that purpose and that purpose alone.

In the Ackerson case, as we have just noticed, the court was of the opinion that if the dinner was given by Wilcox to the defendant's employees for the purpose of showing his appreciation of the gift they had made him and the references by him in his speech to the company's business were merely incidental the defendant would not be liable for the negligence of Root which caused the death of Ackerson and the injury to Hunt. Under this principle it was not within the scope of Burn's agency to authorize Warner to use the defendant's car for the purpose of returning from an undertaking in which the defendant had no concern and from which it derived no benefit but which was solely for Warner's own pleasure and benefit.

Our attention is also called to d'Aleria v. Shirey, 286 Fed. 523, which was decided by the ninth circuit court of appeals. The defendant, together with Armand d'Aleria (to whom she was not at that time married, but to whom she was subsequently married), arrived at a hotel in San Francisco at eleven o'clock at night in an automobile, the



property of the defendant. The defendant went into the hotel and left d'Aleria to take the automobile to the garage where it was usually kept. Twenty minutes later a collision occurred while the automobile was being driven by d'Aleria and as a result the plaintiffs were injured. d'Aleria, who was called by the defendant and who was the only witness as to what occurred from the time he left the hotel until the accident, testified that the defendant told him to take the automobile to the garage and that he replied that he would first call at a certain music store to see the music publisher and that he did make the call and that thereafter he picked up a friend whom he intended to take to the Fairmont Hotel, and that while he was about to do so the accident occurred. The defendant moved for an instructed verdict in her favor, which was denied. The trial resulted in a verdict and judgment for plaintiffs. On Appeal the only assignment of error was the refusal of the court below to grant the motion for an instructed verdict. The appellate court held that there was no error. In giving its reasons for this conclusion the court said: "The plaintiff in error relies upon the doctrine that for a negligent act done by a servant the master is not liable, unless the act was done at a time when the servant was engaged in his master's business. The evidence sufficiently shows that d'Aleria, although not engaged as a chauffeur by the plaintiff in error, sustained such relation to her that, in returning the automobile to the garage, he acted as her servant. He had been employed by her as a musician. He had, as the evidence clearly indicates, acted as her agent in going to the garage to get the automobile for her, and driving it for her, and in returning it to the garage after she had used it. He had no means with which to respond in damages, and it is obvious that both he and she had every incentive to relieve her from responsibility for the results of the accident. Prima facie, the plaintiff in error was liable for the negligent act

of d'Aleria, for the collision occurred from the negligent driving of an automobile belonging to the plaintiff in error, and driven by her servant. The jury were not bound to believe all the testimony that was offered on behalf of the plaintiff in error to overcome that presumption. As to the instructions under which the automobile was placed in the charge of the driver, the testimony of the two parties who alone knew of the facts differed. What was done with the automobile, during the ensuing twenty minutes, the driver alone knew. The jury were not bound to believe that he picked up a friend en route or that, if he did, he intended to go elsewhere than to the garage. There was no corroboration of the driver's testimony by the person who, he said, was with him at the time of the accident, and there is nothing in the record to corroborate the driver's evidence that such a person was with him at that time. The jury may have believed that the errand of d'Aleria to a music store on Market street was an errand on behalf of the plaintiff in error. She did not testify that it was not. If a servant, while about his master's business, makes a deviation of a few blocks for ends of his own, the master is nevertheless liable."

Again we have such a dissimilarity in facts as to render the cited case inapposite. In the d'Aleria case the plaintiffs were in a position to challenge the truth of Armand d'Aleria's testimony and to ask the jury, for obvious reasons, to disbelieve it. The plaintiffs in the instant case are in no such position. The evidence introduced by them, which was uncontradicted, inferentially or otherwise, proves conclusively that the only purpose for which Warner was using the defendant's car was to return from the pursuit of his own pleasure to the defendant's boat, where his activities as the defendant's employee were to be resumed.

Plaintiffs cite many other cases which we think are likewise inapplicable to the case before us.

This case presents the naked question of whether the negligence of an employee of a corporation, in the operation of an automobile, the property of the corporation, which was furnished him by the general agent of the corporation for the sole purpose of returning from a personal enterprise, in which he had been engaged, to the place of his employment, where there was no emergent need of his services, is imputable to the corporation. We know of no judicial precedent requiring an affirmative answer to this question. Warner was no more acting for the defendant on his return from the golf links to the boat than he was acting for it while going from the boat to the golf links. In the one instance he was leaving the scene of his employment and going in search of personal recreation and pleasure, and in the other he was returning to his employment. In both instances he was acting in a personal and not in a representative capacity. Nor does it make any difference that in the latter instance the car that he used was furnished him by the defendant's agent on Maui. This agent had no more power within the limits of his agency to involve the defendant in Warner's negligence by authorizing him to use its car for the purpose of returning to the boat than he had to so involve it if he had authorized its use by Warner for the purpose of going to the golf links.

For the foregoing reasons it is our conclusion that the defendant's motion for a directed verdict was properly granted. The judgment therefore is affirmed.

A. W. A. Cowan (ULRICH &	(S) ANTONIO PERRY
HITE on the briefs) for	(S) JAS. J. BANKS
plaintiffs in error.	(S) CHARLES F. PARSONS
C. A. Gregory (Smith & Wild,	
Smith, Warren, Stanley &	
Vitousek and W. B. Pittman	
on the brief) for defendant	
in error.	



NO. 2031  
 IN THE SUPREME COURT OF THE  
 TERRITORY OF HAWAII

<p>TIMOTEO ANGCO and CIPRIANO          ANGCO, Minors, by VICTOR FE-          RIL ANGCO, their uncle and next          friend,          Plaintiffs-Plaintiffs-in-Error</p> <p style="text-align: center;">vs.</p> <p>THE STANDARD OIL COMPANY OF          CALIFORNIA, a corporation,          Defendant-Defendant-in-Error</p>	}	<p>WRIT OF ERROR TO          JUDGMENT OF THE          CIRCUIT COURT          FIRST JUDICIAL          CIRCUIT          AT LAW          HON. A. M. CRISTY          SECOND JUDGE,          PRESIDING</p>
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JUDGMENT ON WRIT OF ERROR

Received and filed  
 in the Supreme Court  
 Dec. 29, 1931  
 AT 2:32 o'clock P. M.  
 (S) ROBERT PARKER, JR.  
 Assistant Clerk

Approved as to form  
 (S) ULRICH & HITE

SMITH & WILD  
 McCandless Bldg.,  
 Honolulu, T. H.  
 Attorneys for Defendant-  
 Defendant-In Error.

NO. 2031

IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

---

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FE- RIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error, vs. THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error.</p>	}	<p>WRIT OF ERROR TO JUDGMENT OF THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT AT LAW HON. A. M. CRISTY SECOND JUDGE PRESIDING</p>
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JUDGMENT ON WRIT OF ERROR

In the above entitled cause, pursuant to the opinion of the above entitled court rendered and filed on the 8th day of December, 1931, the judgment of the Circuit Court is affirmed.

The cost of the Supreme Court amounting to \$17.75 are taxed against the Plaintiff, Plaintiffs-in-Error herein and Plaintiffs below.

DATED: Honolulu, T. H., this 29 day of December, 1931.

BY THE COURT

(S) Robert Parker, Jr.

Assistant Clerk, Supreme Court.

(SEAL)

APPROVED:

(S) ANTONIO PERRY,

Chief Justice, Supreme Court,  
Territory of Hawaii.

NO. 2031  
IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

---

TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FE- RIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error v. THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error.	}	WRIT OF ERROR TO JUDGMENT OF THE CIRCUIT COURT FIRST JUDICIAL CIRCUIT AT LAW HON. A. M. CRISTY SECOND JUDGE, PRESIDING
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PETITION FOR APPEAL  
and  
AFFIDAVIT OF A. W. A. COWAN

Filed March 22, 1932  
At 10:10 o'clock A. M.  
Robert Parker, Jr.  
Clerk Supreme Court.

ULRICH & HITE  
430 Dillingham Building  
Honolulu, T. H.

Attorneys for  
Plaintiffs-Plaintiffs-in-Error

NO. 2031

IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FERIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error, v. THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error.</p>	}	<p>WRIT OF ERROR TO JUDGMENT OF THE CIRCUIT COURT FIRST JUDICIAL CIRCUIT AT LAW HON. A. M. CRISTY SECOND JUDGE, PRESIDING</p>
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PETITION FOR APPEAL

To the Honorable Chief Justice and associate Justices of  
the Supreme Court of the Territory of Hawaii:

Come now TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FERIL ANGCO, their uncle and next friend, plaintiffs-plaintiffs-in-error, by their attorneys, Ulrich & Hite, deeming themselves aggrieved by the decision and judgment in the above entitled cause of affirming the judgment of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, which judgment of the Supreme Court of the Territory of Hawaii, was made and entered on, to-wit, the 29th day of December, 1931, pursuant to the decision and opinion of said Court rendered December 8, 1931, and claiming that there are manifest and material errors to the damage of said plaintiffs-plaintiffs-in-error, appellants, in said cause, which errors are specifically set forth in the Assignment of Errors filed herewith, to which reference is hereby made, and respectfully pray that an appeal may be allowed them in the above entitled cause, and that they be

allowed to prosecute said appeal to the United States Circuit Court of Appeals for the Ninth Circuit in accordance with the statutes in such cases made and provided; that an Order be made fixing the amount of security the plaintiffs-plaintiffs-in-error shall give, and that the Clerk of the Supreme Court of the Territory of Hawaii be directed to send to the United States Circuit Court of Appeals for the Ninth Circuit a transcript of the record proceedings, exhibits, pleadings and papers in this cause, duly authenticated, for the correction of the errors as complained of, and that a Citation may issue.

And in this behalf plaintiffs-plaintiffs-in-error, appellants, say that the said judgment was rendered in an action at law, and that the value in controversy in said action, exclusive of interest and costs, exceeds \$5,000.

Dated: Honolulu, T. H. March 21, 1932.

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ULRICH & HITE,

By: A. W. A. COWAN

Attorneys for TIMOTEO ANGCO and  
CIPRIANO ANGCO, Minors, by VICTOR  
FERIL ANGCO, their uncle and next  
friend,

Petitioning for Appeal herein.

TERRITORY OF HAWAII, ) -SS-  
 City and County of Honolulu. )

A.W.A. COWAN, being first duly sworn, on oath desposes and says that he is an attorney at law, associated with the law firm of Ulrich & Hite, with its offices in the Dillingham Building, Honolulu, Hawaii, and that he is now and has been one of the attorneys of record in the above entitled cause throughout the various proceedings which have transpired in said cause in this Court and in the court below, and that he is familiar with the subject matter of the said litigation, and affiant further says that he has authority to make oath on behalf of TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FERIL ANGCO, their uncle and next friend, the parties to said litigation now petitioning for appeal herein.

Affiant says that by the order and judgment of the Honorable A. M. Cristy, Second Judge of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, made and entered on, to-wit, March 3, 1931, it was ordered and adjudged that the plaintiffs have and recover nothing by way of damages in the suit previously instituted by them against THE STANDARD OIL COMPANY OF CALIFORNIA, defendant-defendant-in-error herein.

Affiant says that upon appeal taken, by judgment entered in this the above entitled Court in said matter on, to-wit, the 8th day of December, 1931, the rendition and entry of which judgment is assigned as error herein, the said judgment of the Circuit Court has been affirmed, and it has been adjudged by said Supreme Court that the plaintiffs recover nothing by way of damages from the defendant-defendant-in-error herein, and your affiant says that the amount involved in the prosecution of this appeal in said cause is an amount greatly in excess of \$5,000,00, exclusive of costs and interest, all as more fully appears from the records in said cause.

This affidavit is made in support of the foregoing petition for the allowance of an appeal, and affiant further says that he has read said petition for appeal, knows the contents thereof, and that the allegations therein contained are true.

A. W. A. COWAN

Subscribed and sworn to before me this  
19th day of March, 1932.

[ SEAL ]

KATHRYN R. CONNOR  
Notary Public, First Judicial Circuit,  
Territory of Hawaii

Service of the within PETITION FOR APPEAL  
and AFFIDAVIT OF A. W. A. COWAN and re-  
ceipt of a copy is hereby admitted this 21st day  
of March, 1932.

SMITH & WILD,

By C. A. Gregory 3/19/32  
Attorneys for Defendant-  
Defendant-in-Error.

W. B. Pittman

(W. B. Pittman) Attorney for Defendant-  
Defendant-in-Error.

SMITH, WARREN, STANLEY & VITOUSEK

By R. A. Vitousek  
Attorneys for Defendant-Defendant-in-Error.



NO. 2031  
IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FE- RIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error,</p> <p style="text-align: center;">v.</p> <p>THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error</p>	<p>} WRIT OF ERROR TO JUDGMENT OF THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT AT LAW</p> <p>} HON. A. M. CRISTY SECOND JUDGE PRESIDING</p>
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ASSIGNMENT OF ERRORS

Filed March 22, 1932  
At 10:10 o'clock A. M.  
ROBERT PARKER, Jr.  
Clerk Supreme Court.

ULRICH & HITE  
430 Dillingham Building  
Honolulu, T. H.  
Attorneys for  
Plaintiffs-Plaintiffs-in-Error

NO. 2031

**IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII**

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FERIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error,</p> <p style="text-align: center;">v.</p> <p>THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error.</p>	}	<p>WRIT OF ERROR TO JUDGMENT OF THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT AT LAW HON. A. M. CRISTY SECOND JUDGE PRESIDING</p>
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ASSIGNMENTS OF ERROR

Now come TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FERIL ANGCO, their uncle and next friend, plaintiffs-plaintiffs-in-error in the above entitled cause, and say that in the record, proceedings, opinion and judgment of the above entitled cause in the Supreme Court of the Territory of Hawaii, there is manifest error to the prejudice of said plaintiffs-plaintiffs-in-error, appellants, in that, to-wit:

I.

The Supreme Court of Hawaii erred in its judgment affirming the judgment of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, for the reason that said judgment was contrary to the law, contrary to the evidence and contrary to the weight of the evidence.

## II.

The Supreme Court of the Territory of Hawaii erred in ruling that the trial judge did not have the right to instruct the jury that they could find that the automobile belonging to the Standard Oil Company of California was used by the Engineer Warner to shorten the time of his recess and thus lengthen the time of his employment, thus refusing to apply the rule that on a motion for a directed verdict, all the evidence, together with the inferences fairly to be drawn therefrom, must be viewed in the light most favorable to the party resisting the motion.

## III.

The Supreme Court of the Territory of Hawaii erred in ruling that there was no evidence, more than a mere scintilla, before the jury on which to base a finding by that jury that the defendant Company's automobile was used as a reasonable means of meeting an emergency or sudden necessity having to do with the conduct of the defendant Company's business.

## VI. IV

The Supreme Court of the Territory of Hawaii erred in ruling that the facts alleged in plaintiff's offer of proof, being in substance as follows:

- (a) That one Burns was the General Manager and the regular representative of the Standard Oil Company of California on the Island of Maui, and that it constituted a part of his duties to facilitate the passage of Company boats to and from the Island of Maui;
- (b) That said Burns authorized the Engineer Warner to use the Company's car for the purpose of transporting both Warner and the Captain of the boat to the harbor in order that they might assume their duties on the Standard Oil tanker "LUBRICO";
- (c) That it was in the interest of and for the benefit of

the Company that the Captain and the Chief Engineer be on their boat an appreciable interval before the time set for sailing—  
failed to present, together with all the evidence and inferences therefrom in the record, a proper case for the jury.

## V.

The Supreme Court of the Territory of Hawaii erred in ruling that the nature of the Engineer Warner's general employment must control the case, and not the particular use to which the Company's car was put on the particular occasion, regardless of the nature of its operator's general employment, and erred accordingly in viewing the case as one calling for the strict application of the law of Agency and not as one involving primarily the law of Automobiles.

WHEREFORE the plaintiffs-plaintiffs-in-error pray that the decision and judgment of the Supreme Court of the Territory of Hawaii be reversed, and that said Supreme Court be ordered to enter an order reversing the judgment of the Circuit of the First Judicial Circuit of the Territory of Hawaii, and ordering that the case be remanded for a new trial.

Dated at Honolulu, T. H., this 21 day of March, 1932.

ULRICH & HITE,

By A. W. A. COWAN,

BY BARRY S. ULRICH.

Attorneys for Plaintiffs-Plaintiffs-in-Error.

Service of the within ASSIGNMENT OF ERRORS  
and receipt of a copy is hereby admitted this  
21 day of March, 1932.

SMITH & WILD

By C. A. GREGORY      3/19/32.

Attorneys for Defendant-Defendant-in-Error.

W. B. PITTMAN

Attorney for Defendant-Defendant-in-Error.

SMITH, WARREN, STANLEY & VITOUSEK,

By R. A. VITOUSEK

Attorneys for Defendant-Defendant-in-Error.

NO. 2031

IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FE- RIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error, v. THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error.</p>	}	<p>WRIT OF ERROR TO JUDGMENT OF THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT AT LAW HON. A. M. CRISTY SECOND JUDGE PRESIDING</p>
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ORDER ALLOWING APPEAL AND FIXING  
AMOUNT OF BOND

Filed March 22, 1932

At 10:10 o'clock A. M.

ROBERT PARKER, Jr.

Clerk Supreme Court

ULRICH & HITE

430 Dillingham Building

Honolulu, T. H.

Attorneys for

Plaintiffs-Plaintiffs-in-Error

NO. 2031  
**IN THE SUPREME COURT OF THE  
 TERRITORY OF HAWAII**

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<p>TIMOTEO ANGCO and CIPRIANO          ANGCO, Minors, by VICTOR FERIL          ANGCO, their uncle and next          friend,          Plaintiffs-Plaintiffs-in-Error,          v.          THE STANDARD OIL COMPANY OF          CALIFORNIA, a corporation,          Defendant-Defendant-in-Error.</p>	}	<p>WRIT OF ERROR TO          JUDGMENT OF THE          CIRCUIT COURT,          FIRST JUDICIAL          CIRCUIT          AT LAW          HON. A. M. CRISTY          SECOND JUDGE          PRESIDING</p>
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**ORDER ALLOWING APPEAL AND FIXING  
 AMOUNT OF BOND**

Upon reading and filing the petition for appeal and assignment<sup>of</sup> of error presented to this Court by TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FERIL ANGCO, their uncle and next friend, plaintiffs-plaintiffs-in-error appellants, in which they pray that an appeal may be allowed them to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of this Court entered on, to-wit, the 29th day of December, 1931, pursuant to the opinion and decision filed and rendered on the 8th day of December, 1931 in the above entitled cause, wherein it is alleged that manifest error has occurred, now to the end that said errors, if any there be, may be speedily corrected and justice done in the premises.

**IT IS ORDERED** that the said appeal to the United

States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby allowed, and the said plaintiffs-plaintiffs-in-error appellants, are ordered to file with the Clerk of this Court an approved bond in the sum of TWO HUNDRED FIFTY DOLLARS (\$250.00) conditioned that they will prosecute said appeal to conclusion and effect and answer all proper damages and taxable costs if they fail to make good their said appeal.

Dated at Honolulu this 21st day of March, 1932.

[SEAL]

ANTONIO PERRY,

Chief Justice

Supreme Court of the Territory of Hawaii.

Service of the within ORDER ALLOWING APPEAL AND FIXING AMOUNT OF BOND and receipt of a copy is hereby admitted this 21 day of March, 1932.

SMITH & WILD

By C. A. GREGORY 3/19/32

Attorneys for Defendant-Defendant-in-Error.

W. B. PITTMAN

W. B. Pitmann, Attorney for Defendant-Defendant-in-Error.

By R. A. VITOUSEK

By R. A. VITOUSEK

SMITH, WARREN, STANLEY & VITOUSEK,  
Attorneys for Defendant-Defendant-in-Error.



NO. 2031

IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

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TIMOTEO ANGCO and CIPRIANO  
ANGCO, Minors, by VICTOR FE-  
RIL ANGCO, their uncle and next  
friend,  
Plaintiffs-Plaintiffs-in-Error,  
v.  
THE STANDARD OIL COMPANY OF  
CALIFORNIA, a corporation,  
Defendant-Defendant-in-Error.

WRIT OF ERROR TO  
JUDGMENT OF THE  
CIRCUIT COURT,  
FIRST JUDICIAL  
CIRCUIT  
AT LAW  
HON. A. M. CRISTY  
SECOND JUDGE  
PRESIDING

CITATION ON APPEAL

Filed March 22, 1932  
At 10:10 o'clock A. M.  
ROBERT PARKER, Jr.  
Clerk Supreme Court.

ULRICH & HITE  
430 Dillingham Building  
Honolulu, T. H.  
Attorneys for  
Plaintiffs-Plaintiffs-in-Error

NO. 2031

**IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII**

---

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FE- RIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error,  v. THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error.</p>	}	<p>WRIT OF ERROR TO JUDGMENT OF THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT AT LAW HON. A. M. CRISTY SECOND JUDGE PRESIDING</p>
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CITATION ON APPEAL

THE UNITED STATES OF AMERICA, SS.  
THE PRESIDENT OF THE UNITED STATES OF AMERICA to  
THE STANDARD OIL COMPANY OF CALIFORNIA,  
a corporation, appellee:

GREETING :

YOU ARE HEREBY CITED AND ADMONISHED to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit in the city of San Francisco, State of California, within thirty days from the date hereof, pursuant to a petition for appeal duly allowed and filed in the Clerk's Office of the Supreme Court of the Territory of Hawaii from the decision and judgment of the Supreme Court of the Territory of Hawaii in said cause, wherein TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VIC-

TOR FERIL ANGCO, their uncle and next friend, are plaintiffs-plaintiffs-in-error appellants and you are defendant-defendant-in-error appellee, to show cause, if any there may be, why said decision and judgment should not be corrected and speedy judgment should not be done to the parties in that behalf.

WITNESS THE HAND AND SEAL of the Honorable CHARLES EVANS HUGHES, Chief Justice of the Supreme Court of the United States of America this 21st day of March in the year of our Lord 1932.

[SEAL]

ANTONIO PERRY,  
Chief Justice of the Supreme Court of the  
Territory of Hawa

ATTEST:

ROBERT PARKER, Jr.  
Clerk

Supreme Court of the Territory of Hawaii

Service of the within CITATION ON APPEAL and receipt of a copy is hereby admitted this 21 day of March, 1932.

SMITH & WILD

By C. A. GREGORY 3/19/32

Attorneys for Defendant-Defendant-in-Error.

W. B. PITTMAN

Attorney for Defendant-Defendant-in-Error.

SMITH, WARREN, STANLEY & VITOUSEK

By R. A. VITOUSEK

Attorneys for Defendant-Defendant-in-Error.

NO. 2031

IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FE- RIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error, v. THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error</p>	}	<p>WRIT OF ERROR TO JUDGMENT OF THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT AT LAW HON. A. M. CRISTY SECOND JUDGE PRESIDING</p>
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## BOND ON APPEAL

Filed March 22, 1932

At 3:30 o'clock P. M.

(S) ROBERT PARKER, Jr.

Clerk Supreme Court

ULRICH &amp; HITE

430 Dillingham Building

Honolulu, T. H.

Attorneys for

Plaintiffs-Plaintiffs-in-Error

NO. 2031  
IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FERIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error, v. THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error.</p>	}	<p>WRIT OF ERROR TO JUDGMENT OF THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT AT LAW HON. A. M. CRISTY SECOND JUDGE PRESIDING</p>
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BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS that TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FERIL ANGCO, their uncle and next friend, as principals, and the UNITED STATES FIDELITY & GUARANTEE COMPANY, as surety, are held and firmly bound unto THE STANDARD OIL COMPAND OF CALIFORNIA, a corporation, in the penal sum of TWO HUNDRED FIFTY DOLLARS (\$250.00) for the payment of which, well and truly to be made to the said THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, its successors and assigns, the said TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FERIL ANGCO, their uncle and next friend, as principals, and the UNITED STATES FIDELITY & GUARANTY COMPANY as surety, by these presents do bind themselves, their respective successors and heirs, executors and assigns, jointly and severally and firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, on the 22 day of March, 1932, the above bounded<sup>7</sup> principals filed their petition for an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decisions and judgment made and entered in the above entitled cause by the Supreme Court of the Territory of Hawaii;

NOW, THEREFORE, if the said principals shall prosecute their appeal with effect and answer all damages and taxable costs if they fail to sustain said appeal, then this obligation shall be void; otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF the said principals have signed their names and seal, and said surety has affixed its corporate seal and its signature by its proper officers thereunto duly athesized this the 22 day of March, 1932.

TIMOTEO ANGCO and CIPRIANO  
ANGCO, Minors, by VICTOR FERIL  
ANGCO, their uncle and next friend,

By (S) Victor Feril Angco (Principals)  
[SEAL]

UNITED STATES FIDELITY &  
GUARANTEE COMPANY,

By (S) Herman Luis [SEAL]  
Surety

Its Attorney in Fact  
Approved as to amount of Bond  
and sufficiency of surety, this  
22nd day of March, 1932,

(S) ANTONIO PERRY, [SEAL]  
Chief Justice,

Supreme Court,  
Ter. of Hawaii

Service of the within BOND ON APPEAL  
and receipt of a copy is hereby admitted  
this 21 day of March, 1932.

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SMITH & WILD,

By (S) C. A. GREGORY                      3/19/32  
Attorneys for Defendant-Defendant-in-Error.

(S) W. B. PITTMAN  
(W. B. PITTMAN) Attorney for Defendant-  
Defendant-in-Error.

SMITH, WARREN, STANLEY & VITOUSEK,  
By (S) R. A. Vitousek  
Attorneys for Defendant-Defendant-in-Error.



NO. 2031

IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FE- RIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error, v. THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error.</p>	}	<p>WRIT OF ERROR TO JUDGMENT OF THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT AT LAW HON. A. M. CRISTY SECOND JUDGE PRESIDING</p>
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ORDER EXTENDING TIME TO TRANSMIT  
RECORD ON APPEAL

Filed March 22, 1932

At 10:10 o'clock A. M.

ROBERT PARKER, Jr.

Clerk Supreme Court.

NO. 2031  
 IN THE SUPREME COURT OF THE  
 TERRITORY OF HAWAII

<p>TIMOTEO ANGCO and CIPRIANO          ANGCO, Minors, by VICTOR FE-          RIL ANGCO, their uncle and next          friend,          Plaintiffs-Plaintiffs-in-Error,          v.          THE STANDARD OIL COMPANY OF          CALIFORNIA, a corporation,          Defendant-Defendant-in-Error.</p>	}	<p>WRIT OF ERROR TO          JUDGMENT OF THE          CIRCUIT COURT,          FIRST JUDICIAL          CIRCUIT          AT LAW          HON. A. M. CRISTY          SECOND JUDGE          PRESIDING</p>
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ORDER EXTENDING TIME TO TRANSMIT  
 RECORD ON APPEAL

On application of Appellants, and just cause appearing therefor,

IT IS HEREBY ORDERED that Appellants and the Clerk of this Court be and they are hereby allowed until and including the 21 day of April, 1932, within which time to prepare and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the record of the above entitled cause on appeal, together with the Petition for Appeal, Assignment of Errors, Order Allowing Appeal, Citation and Bond on Appeal therewith, and all other papers required as part of said record.

Dated at Honolulu, T. H., 21, 1932.

[SEAL]

ANTONIO PERRY,

Chief Justice  
Supreme Court of the Territory of Hawaii

APPROVED :

SMITH & WILD

By C. A. GREGORY

Attorneys for Defendant-Defendant-in-Error.

W. B. PITTMAN

(W. B. Pittman)

Attorney for Defendant-Defendant-in-Error.

SMITH, WARREN, STANLEY & VITOUSEK,

By (S) R. A. VITOUSEK

Attorneys for Defendant-Defendant-in-Error.

Service of the within ORDER EXTENDING  
TIME TO TRANSMIT RECORD ON APPEAL  
and receipt of a copy is hereby admitted this  
21st day of March, 1932.

SMITH & WILD

By C. A. GREGORY

3/19/32

Attorneys for Defendant-Defendant-in-Error.

W. B. PITTMAN

(W. B. Pittman)

Attorney for Defendant-Defendant-in-Error.

SMITH, WARREN, STANLEY & VITOUSEK

By R. A. VITOUSEK

Attorneys for Defendant-Defendant-in-Error.

NO. 2031  
IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

---

TIMOTEO ANGCO and CIPRIANO  
ANGCO, Minors, by VICTOR FE-  
RIL ANGCO, their uncle and next  
friend,  
Plaintiffs-Plaintiffs-in-Error,  
v.  
THE STANDARD OIL COMPANY OF  
CALIFORNIA, a corporation,  
Defendant-Defendant-in-Error

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WRIT OF ERROR TO  
JUDGMENT OF THE  
CIRCUIT COURT,  
FIRST JUDICIAL  
CIRCUIT  
AT LAW  
HON. A. M. CRISTY  
SECOND JUDGE  
PRESIDING

PRAECIPE

Filed March 22, 1932,

At 10:10 o'clock A. M.

(S) ROBERT PARKER, Jr.

Clerk Supreme Court.

ULRICH & HITE

430 Dillingham Building

Honolulu, T. H.

Attorneys for  
Plaintiffs-Plaintiffs-in-Error

NO. 2031

**IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII**

---

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FE- RIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error,</p> <p style="text-align: center;">v.</p> <p>THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error.</p>	}	<p>WRIT OF ERROR TO JUDGMENT OF THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT AT LAW HON. A. M. CRISTY SECOND JUDGE PRESIDING</p>
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**PRAECIPE**

To ROBERT PARKER, Jr., Esquire, Clerk of the Supreme Court, Territory of Hawaii:

YOU WILL PLEASE prepare a transcript of record in the above entitled cause to be filed in the Office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and to include in said transcript the following:

1. Complaint, Motion for Appointment of next friend, Order on motion, and Summons dated November 19, 1930;
2. Defendant's answer, dated December 8, 1930;
3. Demand for jury trial, dated December 11, 1930;
4. Judgment dated March 3, 1931;

5. Writ of error, dated July 8, 1931;
  6. Decision of the Supreme Court of the Territory of Hawaii, dated December 8, 1931;
  7. Judgment on writ of error, dated December 29, 1931;
  8. Petition for appeal and affidavit of A.W.A. Cowan, dated March 21, 1932;
- Amended Mch. 29 /32. 9a. Assignments of Error. (A.W.A.C.)  
A.P.
10. Order allowing appeal and fixing amount of bond, dated March 21, 1932;
  11. Citation on appeal, dated March 21, 1932;
  12. Bond on appeal, dated March 21, 1932;
  13. Statement of the evidence;
  14. Order extending time to transmit record on appeal, dated March 21, 1932;
  15. Copy of this praecipe;
  16. All orders enlarging time to docket cause.

You will annex to and transmit with the record the original petition for appeal, assignment of errors, order allowing appeal and citation with return service, and also your certificate under seal, stating in detail the costs of the record and by whom the same was paid.

Dated: Honolulu, T. H., March 21, 1932.

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TIMOTEO ANGCO and CIPRIANO ANGCO,  
by VICTOR FERIL ANGCO, their uncle and  
next friend,

ULRICH & HITE  
By (S) A. W. A. COWAN

Their Attorneys.

Service of the within PRAECIPE and receipt of a copy is hereby admitted this 21st day of March, 1932.

SMITH & WILD,

By (S) C. A. GREGORY

3/19/32

Attorneys for Defendant-Defendant-in-Error

(S) W. B. PITTMAN

Attorneys for Defendant-Defendant-in-Error

SMITH, WARREN, STANLEY & VITOUSEK,

By (S) R. A. VITOUSEK

Attorneys for Defendant-Defendant-in-Error



NO. 2031

IN THE SUPREME COURT OF THE TERRITORY OF HAWAII

<p>TIMOTEO ANGCO and CIPRIANO          ANGCO, Minors, by VICTOR FERIL ANGCO, their uncle and next friend,          Plaintiffs-Plaintiffs-in-Error,</p> <p style="text-align: center;">v.</p> <p>THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation,          Defendant-Defendant-in-Error.</p>	}	<p>WRIT OF ERROR TO JUDGMENT OF THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT, AT LAW</p> <p>HON. A. M. CRISTY          SECOND JUDGE</p> <p>RESIDING</p>
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ORDER EXTENDING TIME TO TRANSMIT RECORD ON APPEAL

Filed April 23, 1932

At 9:10 o'clock A. M.

ROBERT PARKER, Jr.

Clerk Supreme Court.

By ULRICH & HITE,  
430 Dillingham Building  
Honolulu, T. H.

Attorneys for Plaintiffs-Plaintiffs-in-Error.

SMITH & WILD, W. B. PITTMAN, and SMITH,  
WARREN, STANLEY & VITOUSEK, Honolulu,  
Attorneys for Defendant-Defendant-in-Error.

NO. 2031

IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FE- RIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error,  v. THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error.</p>	}	<p>WRIT OF ERROR TO JUDGMENT OF THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT AT LAW HON. A. M. CRISTY SECOND JUDGE PRESIDING</p>
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ORDER EXTENDING TIME TO TRANSMIT  
RECORD ON APPEAL

On application of Appellants, and just cause appearing therefore,

IT IS HEREBY ORDERED that Appellants and the Clerk of this Court be and they are hereby allowed until and including the 29th day of May, 1932, within which time to prepare and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the record of the above entitled cause on appeal, together with the Petition for Appeal, Assignment of Errors, Order allowing appeal, Citation and Bond on Appeal therewith, and all other papers required as part of said record.

A. P. Dated at Honolulu, T. H., April 23, 1932.

[SEAL]

ANTONIO PERRY,

Chief Justice

Supreme Court of the Territory of Hawaii

Copies of the foregoing Order served upon attorneys for Defendant-Defendant-in-Error by mail this 23rd day of April, A. D., 1932.

A.W.A.C.      ULRICH & HITE

By A. W. A. COWAN

IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

TIMOTEO ANGCO and CIPRIANO  
ANGCO, Minors, by VICTOR FE-  
RIL ANGCO, their uncle and next  
friend,  
Plaintiffs-Appellants,  
v.  
THE STANDARD OIL COMPANY OF  
CALIFORNIA, a corporation,

Defendant-appellee.  
APPEAL FROM  
SUPREME COURT  
OF THE  
TERRITORY OF  
HAWAII

SECOND REVISED STATEMENT OF EVIDENCE

Filed April 16, 1932

At 8:40 o'clock A. M.

ROBERT PARKER, Jr.

Clerk Supreme Court.

ULRICH & HITE

430 Dillingham Building

Honolulu, T. H.

Attorneys for Plaintiffs-Appelants

SMITH & WILD, W. B. PITTMAN, and  
SMITH, WARREN, STANLEY & VITOUSEK

Honolulu, T. H.

Attorneys for Defendant-Appellee.

**IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FERIL ANGCO, their uncle and next friend,  Plaintiffs-Appellants,  v.  THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation,</p>	}	<p>Defendant-appellee.  APPEAL FROM SUPREME COURT  OF THE TERRITORY OF HAWAII</p>
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**SECOND REVISED STATEMENT OF EVIDENCE**

This is an action brought on behalf of Timoteo Angco and Cipriano Angco, minors, by Victor Feril Angco, their uncle and next friend, against the Standard Oil Company of California, a corporation. The action is for damages arising out of the death of the father of the plaintiffs, Felix Angco, upon whom they claim they were dependent for support.

The father of the plaintiffs was killed while standing off the public highway, together with several other Filipinos, beside a parked Ford truck, on the Island of Maui between Paia and the harbor at Kahului, at a place about three miles from Paia and about five miles from Kahului Harbor. Felix Angco and another Filipino were killed and a third person injured when a Willys-Knight roadster, admittedly the property of the Standard Oil Company of California, and driven by Reginald Warner, chief engineer of the Standard Oil Company tanker LUBRICO, then anchored in the harbor at Kahului, struck them down. Warner was accompanied by one Daniels, who was the captain of the tanker LUBRICO. When the accident occurred, the two officers of the boat were

returning to the steamer from the home of C. D. Burns at Paia. In this connection the following evidence was adduced at the trial: (Direct examination of George H. Cummings, Deputy Sheriff, Island of Maui.)

"A. The Willys-Knight was jammed up against the tree, the radiator was jammed in, the fenders bent and headlights were out of order. The truck at the hind, the right end, extreme end, was a dent as if it had been struck by something.

"Q. Assuming that the truck was facing that way, would it be on this side or that side?

"A. That side, the extreme right end.

"Q. Did you make any memorandum or take any notes as to the numbers of those cars at that time? Did you make any investigation with a view to ascertaining to whom the automobiles belong?

"A. I found out that the Maui Dry Goods Company owned the truck and the Willys-Knight was a car used by Mr. Burns, manager of the Standard Oil Company."

"Q. Did he tell you where he was going at the time of the accident?

MR. WILD: Objected to as calling for hearsay, and no statements made by the agent can be binding upon the company, not even to establish the fact as to who was driving the car at the time of the accident, and further there is no basis for impeachment, and it is incompetent, irrelevant and immaterial.

THE COURT: Objection overruled.

MR. WILD: Exception.

A. He told me he took the car from Mr. Burns' house to go back to the Standard Oil Company boat "Lubrico".

Q. Did he tell you they were going to the boat?

MR. WILD: Objected to as leading and suggestive.

THE COURT: Objection overruled.

Mr. Wild: Exception.

A Yes. They told me they took the car from Mr. Burns' garage to go back to the Standard Oil Company boat "Lubrico" at Kahului.

Q Did he tell you at the time what time the boat was then to leave, as he understood it?

MR. WILD: Objected to as calling for hearsay.

THE COURT: I think we are getting to the extreme limits of the rule."

The accident occurred on June 16, 1930, between the hours of seven and eight o'clock P. M. Warner, in reply to a question from the Court as to when he was due back on the boat, replied that "he thought to get back about 7:30." Evidence in the record shows that the Willys-Knight roadster was traveling at a great rate of speed, variously described as 45 miles an hour, and "like the wind", etc. Further evidence was adduced showing that the Willys-Knight roadster swerved to the left-hand side of the road going toward Kahului while passing the witness' car, and struck the Ford truck and the deceased with terrific force, the impact being such that the truck, which was facing Kahului, was jammed against a tree and swung completely around so that after the accident it faced toward Paia.

Later, but before this trial, Warner was tried on and acquitted of a charge of manslaughter growing out of this accident. W. B. Pittman, Esquire, who was of counsel for the defendant in the trial below, defended Warner in the manslaughter trial. Mr. W. B. Pittman, associated with other counsel for the defendant Standard Oil Company of California, cross-examined each of the witnesses specifically with regard to what those witnesses had testified to in the criminal trial on Maui.

"Q. Did you go out with the jury when we went out on the criminal case? Did you go out when we examined that tree? Do you remember when the Judge took the jury out?"

The record further disclosed that police officers went



to the LUBRICO for the purpose of placing Warner under arrest on the criminal charge. C. D. Burns, was present on the boat during the negotiations for the release of Warner. Testimony of the arresting officer was adduced to the effect that the captain of the boat told him "he couldn't very well go without his Chief." The officer further testified that he informed the captain that the only man who could help him was the County Attorney, Mr. Bevins, and that the County Attorney came down and then sent for Mr. Walsh, Manager of the Kahului Railroad. After Walsh came down and while Burns was also on the boat, Warner was put under arrest and was allowed to sail accompanied by police officers.

Further evidence was adduced to the effect that the witness, accompanied by officers and by Mr. Burns, asked to meet the captain of the boat, and was introduced to Captain Daniels by Mr. Burns. Later Mr. Warner was called in. Mr. Warner first said that he was riding in the rumble seat of the car in question, and that a man from another boat was driving the car, but upon being told by the witness to "come clean and tell the truth", he confessed that he was at the wheel and that the captain was the only other man in the car. Warner and the captain also told the witness that they got the car at Mr. Burns' house at Paia for the purpose of going back to the Standard Oil Company boat LUBRICO in the harbor at Kahului. Mr. Warner also stated that the accident was "something that might happen to anyone."

Testimony was adduced as follows:

"A I remember all what he told me, he didn't mention anybody, or anything about the children, in fact he was offering to pay the expenses by the Standard Oil Company, he told me --

Mr. WILD: I move to strike the answer out as a voluntary statement, I haven't asked for the conversation.

THE COURT: The witness is entitled to answer your ques-

tion, Mr. Wild, yes or not and then explain his answer. Motion overruled.

MR. WILD: In this conversation between you and Mr. Burns, he told you that he was perfectly willing to see that the funeral expenses of your brother were paid, but that the Standard Oil Company did not admit any liability?

A He said this way, he said, he is sorry that it happened, but anyhow he conveyed the idea —

MR. WILD: I am not asking you what he conveyed—I am not asking you what he said —

THE COURT: The witness is entitled to tell the conversation to the best of his recollection, you have asked him about it and the witness is entitled to answer.

A Mr. Burns when he came to see me over there, he was telling me he was chasing me, he having received a wireless from the main office that I am here in Maui, he had sent a wireless to Honolulu, 'Of course we are very sorry at what happened, and the Standard Oil, he said, is going to bear all expenses as to his funeral, funeral expenses, and hospital' so we left right there, because the funeral was going to be on, he didn't come out to the house, he was on the other side of the fence, and I was on the other side of the fence, so he left.

Q Didn't Mr. Burns tell you at that same conversation that this offer that he made to pay the funeral expenses was without recognizing any liability at all upon the Standard Oil, or upon Mr. Warner in this accident?

A. I don't remember that.

Q. Do you have any recollection at all in that regard?

A. No.

Q. Do you deny that he told you that?

A. No, I don't remember anything regarding that, I was in a hurry.

Q. Do you deny that Mr. Burns told you that which I have just told you?

A. I remember telling him that I was very thankful when



he said he was going to bear all expenses—

Q Never at any time did you ever tell Mr. Burns that Felix Angco your brother did not have any children living at the time of his death?

A No, that is impossible.

Q You deny that?

A That is impossible, I know that he has children."

Reginald Warner was called as a witness by the plaintiffs and testified: That on July 16, 1930 (the date of the accident), he was employed by the defendant as chief engineer on the steamship LUBRICO, which was at that time anchored at Kahului on the Island of Maui; that he remembered the accident in question and that he was at the time driving the automobile and was going towards the ship. When he was asked the question, "And you were going, were you not, to the steamship LUBRICO," he answered, "We were going towards the steamship. I think we were going to stop and eat in Kahului first." He was then asked if he had not already testified that he was going to the steamship. He answered, "Yes," and then he was asked, "And you were, were you not?" to which he answered, "Not direct. I asked the captain if he wanted to eat, and he said 'when we get down there we will see.'" He was then asked, "And before going to sea you expected to eat in Kahului?" and answered, "Yes," and that aside from this he was on his way to the boat. He was then asked whether his duties on the boat would have to do with whatever the usual duties of the chief engineer are on a steamship, to which he answered, "Yes." He was then asked the following questions, to which he gave the following answers: "Q The boat was going to sea that night? A Yes. Q Captain Daniels was with you at the time? A Yes. Q He is the captain of the boat? A Yes. Q And the boat would go to sea under his command? A From the outside of Kahului harbor." On cross-examination the witness testified that as chief engineer of the

steamship LUBRICO he had no duties on shore at Kahului on the night or afternoon of June 16, 1930; that at the time he was driving the automobile he had not come from performing any duties for the Standard Oil Company and at the time he was driving the car he was not performing any duties for said company; that he was driving down to have a sandwich before going on the boat; that he had been chief engineer for several years and during that time had been in the employment of the defendant. At this juncture the following occurred: "The Court: The court would like to ask a question in view of the line of examination taken, in anticipation of being called upon to make rulings in the matter. When you went ashore did you go ashore in connection with being under orders from anybody having a right to give you orders, or were you on shore that night? A Whenever I go on shore I can go as I please. The Court: Did anyone order you to go ashore in connection with the boat? A No. The Court: In connection with driving the automobile that night did anyone give you any orders in connection with driving the car? A No. The Court: Did anyone give you any orders as to where you should go? A No. The Court: At the time of the accident were you under orders of any superior, orders of anyone on the boat? A No, I just asked him if he wanted to eat. The Court: At the time you got in the car to go back to the boat the captain was with you? A Yes. The Court: Did the captain give you any orders as to returning to the boat and resuming your duties at that particular time? A No, sir. The Court: Were you performing any task or errand on behalf of the captain? A No, sir. The Court: When did you leave the LUBRICO to come ashore? A Between 2:30 and 3 o'clock. Q The Court: At that time were you on any errand connected with the boat? A No, sir, The Court: Were you in company with the captain under his orders to accompany him? A No, sir, I went there mostly with Mr.

Burns to play golf. The Court: A pleasure trip? A Yes. The Court: When were you due back on the boat? A I asked the chief officer when he would be ready to go and he said between 9 and 11, so I thought to get back about 7:30. Mr. Pittman" (for defendant) "Q When you are on shore has anybody got any power over you at all or can they give you any authority at all? A No, I might respect his position and do a thing or two, but he has no authority. Mr. Pittman: Q Has anybody on the ship any authority over you when you are on land off the ship? A No, sir. \* \* \* Direct examination (continued) by Barry S. Ulrich, Esq." (for plaintiff): "Q It was your duty, was it not, to be back on the boat in time to sail? A Yes. Q And of course you say you are on your own more or less while you are ashore but the agents of the company have the right. have they not, to indicate to you when the boat would sail: that is, if they decided to sail earlier you would have to appear on the boat. I mean the persons in authority were so in authority of that vessel? Mr. Wild: I object as purely speculative. There is no showing that boat changed its schedule that night. They were to sail at 9 and they proceeded back at 7:30. It is purely speculative. (Argument) The Court: The court will assume that a man on the boat if and when notified to return at an earlier time, if he wants to keep his job, would have to come back, but there is no showing there was any call to return earlier. Objection sustained. Q In other words, It was your duty to be on the boat in time to sail? A Yes. (Cross-examination waived.)"

The plaintiffs then offered, and the court received, in evidence an ordinance of the County of Maui relating to speed limits in residence districts. This concluded the testimony. Thereupon the defendant made a motion for a directed verdict, one of the grounds being that the plaintiffs' evidence showed affirmatively that Warner was not acting in the course or scope of his employment or upon the busi-

ness of the defendant at the time of the accident. Before the motion was acted upon the plaintiffs (through counsel) moved that the court reopen their case and permit them to put on further evidence.

The proceedings had on the motion to reopen are incorporated herein verbatim from the transcript of testimony as follows:

“MR. ULRICH: It will be considered that this made in the presence of the jury?

THE COURT: Surely.

MR. ULRICH: On behalf of the plaintiff at this time I move that the Court reopen plaintiffs' case and permit the plaintiff to put on further evidence, particularly with reference to the authorization by the agent Burns given to the engineer Warner to drive the car to the boat; further, with reference to the general authority and powers and duties of the said Burns as the agent and representative of the defendant, Standard Oil Company on the Island of Maui and Territory of Hawaii.

THE COURT: Will you be more specific as to what the evidence is.

MR. ULRICH: We offer to prove by Mr. Burns that he did authorize Mr. Warner to take the car for the purpose of driving himself and the captain down to resume their duties on the boat. We offer to show that at first he said he would take them down himself, but later said he had a social engagement and they should take the car and leave it at the wharf and he would pick it up there later. We offer to prove Mr. Burns was the agent and representative of the Standard Oil Company on the Island of Maui, with general authority to attend to all the necessary details of the business of that company on the Island of Maui having to do with the conduct of the business with reference to the disposition of merchandise on Maui and with reference to the necessary details concerning the dispatch of the compa-

ny's business.

MR. WILD: I object to the reopening of the case, because at the conclusion of the plaintiff's case I asked if they had completed the case and they said they had, and then we rested. It places us in a position where we cannot reopen and we cannot reopen if the Court refused to direct a verdict as directed, and at the conclusion of the case where all the evidence is in and the defendant has rested the case is concluded now. There is no new thing. We had Mr. Burns down from Maui at the request of plaintiffs' counsel ready to answer any questions they wanted to ask of him, and he went home yesterday afternoon, because he has to get his accounts out for this month. They have shown no lack of evidence concerning this evidence at the time we had our hearings before. It appears affirmatively that if they wanted to they would have had Mr. Burns' evidence if they wanted it, and it seems to me a court of law is not a place to go on a fishing expedition. You put on your evidence and rest and then the other side rests and then you make a motion and then you ask to reopen. There is no showing that there was a lack of knowledge at the time of the trial, and we contend your Honor is without power to reopen. Second, if your Honor did reopen and took in the evidence on the very statement counsel has made, that evidence would not change your Honor's ruling in regard to the directed verdict.

MR. ULRICH: It is merely a question of preserving the record.

THE COURT: I do not understand you are ready to prove that there was any emergency existing at the time and place in question which made it imperative to use a company's car, rather than some other means of transportation, to meet the emergency of the company.

MR. ULRICH: We propose to show facts which will present a question to the jury as to whether there was an



emergency.

THE COURT: What facts? I think the Court is entitled to get the facts you intend to present to the jury which might raise a presumption of emergency.

MR. ULRICH: The fact that it was 6:30 in the evening; the fact that the boat was leaving that night, as they understood at the time, between 9 and 10 or 11 o'clock; the fact there were duties for the captain and engineer to perform on the boat before the boat left; the fact that they were at a distance, several miles —

THE COURT: More than five miles?

MR. ULRICH: I don't know.

MR. PITTMAN: I think about five miles.

THE COURT: The witnesses placed the scene of the accident between two and three miles from Paia.

MR. ULRICH: They were at the Burns' home when they took the car. I think we can say at least five miles, or approximately that, from the boat.

THE COURT: Were telephones accessible?

MR. ULRICH: I don't know what the evidence would show.

THE COURT: What do you think the evidence would show?

MR. ULRICH: I don't propose to show that there might have been other ways of getting them down. In other words, I am not suggesting I will be able to prove this is the only way they could have gotten to the boat, but I do suggest it is a reasonable way.

THE COURT: I understand Mr. Burns is a distributing and sales agent of the Company in Maui?

MR. ULRICH: I will show that he is regular representative of the Standard Oil Company on Maui.

THE COURT: Has he any duties in connection with the boat?

MR. ULRICH: I believe we can show it is part of his duties to take such reasonable means as necessary for the

expediting of the boat. I don't know what his contract of employment is, but I think it is reasonable to suggest that his contract of employment is that of agent and representative of the Standard Oil Company on Maui to forward the interests of the company, there whether having to do with the boats or anything else.

THE COURT: The Court will permit you to do this, to go and interview Mr. Burns, accompanied by counsel for the defendant.

MR. WILD: He went home last night.

THE COURT: I understand from the facts disclosed that the man concerned, Mr. Burns, has been in attendance on the Court and has gone back to his employment on Maui.

MR. ULRICH: We have a record of the testimony, so far as the lending of the car is concerned, taken at the other trials, and so far as his duties are concerned, we can call another officer of the Standard Oil Company.

THE COURT: With Burns missing and absent without any fault on the part of the defendant, what witness are you intending to offer?

MR. ULRICH: I should call the Captain. I have the testimony.

THE COURT: Let's see the testimony.

MR. ULRICH: As to the scope of the employment I would have to call some officer of the Standard Oil Company here.

THE COURT: Who?

MR. ULRICH: Whoever is the representative of the Standard Oil Company.

THE COURT: The Court will permit you to go with counsel for the defendant and find that officer and check up on the matter. Anybody here whom Mr. Ulrich wants to interview?

MR. PITTMAN: I will go down and bring you up an officer.

MR. WILD: We have no objection to his interviewing any official of the company he wishes. Mr. Campbell I think would be the one.

MR. ULRICH: I don't offer to prove that he has any control over the boats. My offer was to prove that he might take such steps and do such things as might be necessary to expedite the movement of the company's boats.

MR. WILD: Well, he has nothing of that kind to do.

THE COURT: Do I understand, Mr. Ulrich, that your request for reopening concerns any effort to prove that Mr. Burns had any supervision over the crew or employees on the boats of the Standard Oil Company?

MR. ULRICH: No.

THE COURT: I understand you do not intend to show that he had any general control or supervision of the boats?

MR. ULRICH: No.

**THE COURT: Do you intend to show that he was requested to give any orders in supervision or control over the persons or the boats?**

MR. ULRICH: I do not intend to show he had any control over the movements of the men.

THE COURT: Do I understand that your offer means to prove that Mr. Burns in his office as an official of the company was requested to use the company's automobile for any other purpose than the conveyance of the captain and the engineer in returning from their holiday to their duties on the boat?

MR. ULRICH: In this particular instance he authorized the use of the automobile for the company's purposes in getting the men back to the boat.

THE COURT: Was there any other company's business of any kind connected with your offer of proof that Mr. Burns was requested or concerned with furthering than the matter, whatever inference may be drawn from it, of assisting these two men in returning to the boat?



MR. ULRICH: That's all.

MR. WILD: From the offer of proof, as it now appears, it would not change the Court's ruling, and counsel has in everything he contends to be a fact.

MR. ULRICH: If it will be admitted, as a matter of record, that Mr. Burns authorized the use of this car for the purpose of getting the men back to the boat, and further admitted that Mr. Burns is a representative of the Standard Oil Company on Maui.

THE COURT: I understand the extent of opposing counsel's admission is that Mr. Burns is distributing and sales manager of the Standard Oil Company products on the Island of Maui, having no supervision or control over the movement of the boats.

MR. WILD: That is an accurate statement.

THE COURT: And automobile in question, Mr Burns was under no orders or requests on company business other than could be inferred by your argument that the return of the men from their holiday in some way benefitted and expedited the company's affairs as to the boat.

MR. WILD: We will admit that.

THE COURT: Well, then it is not necessary to take the offer, and I deny the motion.

MR. ULRICH: Exception to the denial of the Court to reopen."

The motion to reopen having been denied and the offer of proof having been refused, the court thereupon directed the jury to bring in a verdict for the defendant and against the plaintiffs. Judgment in conformity with this direction was entered and an appeal was taken by plaintiffs to the Supreme Court. The Supreme Court entered judgment affirming the judgment of the trial court. From this judgment of the Supreme Court this appeal is taken.

All the matters contained in the foregoing Statement of Evidence were adduced as evidence, either verbatim or in

substance, in the trial of the cause below.

Dated: Honolulu, T. H., April 16, 1932.

APPROVED: TIMOTEO ANGCO and CIPRIANO ANGCO,  
Minors, by VICTOR FERIL ANGCO, their  
uncle and next friend,  
Plaintiffs-Appellants,

BY ULRICH & HITE  
By A. W. A. COWAN  
Their Attorneys

THE STANDARD OIL COMPANY OF CALI-  
FORNIA, a corporation,  
Defendant-Appellee,

BY SMITH & WILD,

By \_\_\_\_\_

Its Attorneys

and

\_\_\_\_\_

(W. B. Pittman)

Its Attorney,

and

SMITH, WARREN, STANLEY & VITOUSEK,

By \_\_\_\_\_

Its Attorneys

The foregoing Second Revised Statement of Evidence having been presented to me by the appellant and no objection thereto having been noted by the appellee (save as to materiality and relevancy, as to which no ruling is hereby made), the statement is hereby certified as being true and correct as a statement of the evidence adduced at the trial of the

cause.

Honolulu, April 26, 1932.

ANTONIO PERRY,  
Chief Justice,  
Supreme Court,  
Territory of Hawaii

Service of the within SECOND REVISED  
STATEMENT OF EVIDENCE and copy  
there of acknowledged this 16th day of  
April, A. D., 1932.

SMITH & WILD,  
By C. A. GREGORY  
Attorneys for Defendant-Appellee.

W. B. PITTMAN  
(W. B. Pittman)  
Attorney for Defendant-Appellee.

SMITH, WARREN, STANLEY & VITOUSEK,  
By C. DUDLEY PRATT  
Attorneys for Defendant-Appellee.

NO. 2031

IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

TIMOTEO ANGCO and CIPRIANO  
ANGCO, Minors, by VICTOR FE-  
RIL ANGCO, their uncle and next  
friend,  
Plaintiffs-Plaintiffs-in-Error,  
vs.  
THE STANDARD OIL COMPANY OF  
CALIFORNIA, a corporation,  
Defendant-Defendant-in-Error.

ERROR TO CIRCUIT  
COURT FIRST  
CIRCUIT.

HONORABLE  
A. M. CRISTY,  
PRESIDING.

CLERK'S CERTIFICATE.

TERRITORY OF HAWAII ) SS:  
CITY AND COUNTY OF HONOLULU.)

I, ROBERT PARKER, JR., Clerk of the Supreme Court of the Territory of Hawaii, BY VIRTUE OF THE PETITION ON APPEAL filed March 22, 1932, the original whereof is attached to the foregoing record, being pages 38 to 43, both inclusive, and in pursuance to the praecipe filed March 22, 1932, copy whereof is attached to the foregoing transcript, being pages 62 to 64, both inclusive.

DO HEREBY TRANSMIT to the United States Circuit Court of Appeals for the Ninth Circuit, the foregoing transcript of record being pages 1 to 37, both inclusive, and pages 55 to 58, both inclusive, and I certify the same to be full, true and correct copies of the pleadings, record, entries, opinion and final judgment which are now on file in the office of the Clerk of the Supreme Court of the Territory of

Hawaii, in the above entitled cause, Number 2031.

I DO FURTHER CERTIFY that the original assignment of errors filed March 22, 1932, being pages 44 to 48, both inclusive, the original order allowing appeal and fixing amount of bond filed March 22, 1932, being pages 49 to 51, both inclusive, the original citation on appeal, filed March 22, 1932, being pages 52 to 54, both inclusive, the original order extending time to April 21, 1932, filed March 22, being pages 59 to 61, both inclusive, the original order extending time to May 29, 1932, filed April 23, 1932, being pages 66 to 67, inclusive and the original second revised statement of evidence, filed April 16, 1932, being pages 68 to 88, both inclusive, of the foregoing record.

I, LASTLY CERTIFY that the cost of the foregoing transcript of record is \$44.80, and the said amount has been paid by Messrs. Ulrich & Hite, Attorneys for the appellants.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the SEAL of the  
[S E A L] Supreme Court of the Territory of Hawaii,  
at Honolulu City and County of Honolulu,  
this 2nd day of May, A. D., 1932.

ROBERT PARKER, JR.

Clerk of the Supreme Court of the  
Territory of Hawaii

NO. 2031

IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FE- RIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error, v. THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error.</p>	}	<p>WRIT OF ERROR TO JUDGMENT OF THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT AT LAW HON. A. M. CRISTY SECOND JUDGE PRESIDING</p>
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ORDER EXTENDING TIME TO TRANSMIT  
RECORD ON APPEAL

On application of Appellants, and just cause appearing therefor,

IT IS HEREBY ORDERED that Appellants and the clerk of this Court be and they are hereby allowed until and including the 29th day of June, 1932, within which time to prepare and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the record of the above entitled cause on appeal, together with the Petition for Appeal, Assignment of Errors, Order allowing appeal, Citation and Bond on appeal therewith, and all other papers required as part of said record.

Dated at Honolulu, T. H., May 24, 1932.

[SEAL]

(SIGNED) ANTONIO PERRY  
Chief Justice

Supreme Court of the Territory of Hawaii

NO. 2031  
IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

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TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FE- RIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error, v. THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error.	} WRIT OF ERROR TO JUDGMENT OF THE CIRCUIT COURT, FIRST JUDICIAL COURT AT LAW HON. A. M. CRISTY SECOND JUDGE PRESIDING
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ORDER EXTENDING TIME TO TRANSMIT  
RECORD ON APPEAL  
FILED MAY 24, 1932  
AT 11:05 O'CLOCK A. M.  
ROBERT PARKER Jr.  
CLERK SUPREME COURT

NO. 2031

IN THE SUPREME COURT OF THE  
TERRITORY OF HAWAII

<p>TIMOTEO ANGCO and CIPRIANO ANGCO, Minors, by VICTOR FE- RIL ANGCO, their uncle and next friend, Plaintiffs-Plaintiffs-in-Error, vs. THE STANDARD OIL COMPANY OF CALIFORNIA, a corporation, Defendant-Defendant-in-Error.</p>	}	<p>ERROR TO CIRCUIT COURT FIRST CIRCUIT  HONORABLE A. M. CRISTY, PRESIDING.</p>
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## CLERK'S CERTIFICATE.

TERRITORY OF HAWAII ) ss:  
CITY AND COUNTY OF HONOLULU. )

I, ROBERT PARKER, JR., Clerk of the Supreme Court of the Territory of Hawaii, DO HEREBY CERTIFY that the foregoing is a full, true and the original Order extending time to transmit record on Appeal to the Ninth Circuit Court of Appeals for the Ninth Circuit, filed May 24, 1932, being pages 89 to 90, both inclusive, in the above entitled cause, Number 2031.

IN WITNES WHEREOF, I have hereunto set my hand and affixed the Seal of the above entitled Court, at Honolulu, City and County of Honolulu, Territory of Hawaii, this 24th day of May, A. D. 1932.

ROBERT PARKER JR.

Clerk of the Supreme Court of the  
Territory of Hawaii.